



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO COCHRAN'S LUMBER & MILLWORK, INC. Registration No. 81403**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Cochran's Lumber & Millwork, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Cochran's" means Cochran's Lumber & Millwork, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Cochran's is a "person" within the meaning of Va. Code § 10.1-1300.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Cochran's Lumber & Millwork, Inc. facility, located at 525 Jack Enders Boulevard in Clarke County, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a Stationary Source Permit to Modify and Operate a wood flooring, door and millwork manufacturing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Cochran's on April 11, 2011.
10. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Cochran's Lumber & Millwork, Inc. owns and operates the Facility in Clarke County, Virginia. The Facility is subject of the Permit which allows for the operation of a wood flooring, door and millwork manufacturing facility.
2. On May 13, 2011, DEQ received notifications for commencing construction and start-up of Spray Booth #1 (Ref No. P1), Kilns (Ref No. K1 and K2), and the Pre-Finish Line #1 (Ref No. PFL-1).
3. On May 20, 2011, DEQ staff conducted a PCE of the notification and facility record for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

- a. Construction of PFL-1 commenced on November 25, 2010, prior to issuance of the Permit.
  - b. Start-up of PFL-1 occurred on January 4, 2011, prior to issuance of the Permit.
4. 9 VAC 5-80-1120(A) states that "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
5. 9 VAC 5-80-1210 (D) states that "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
6. On June 3, 2011, based on the PCE and follow-up information, the Department issued Notice of Violation No. AVRO8012 to Cochran's Lumber and Millwork, Inc. for the violations described in paragraphs C2 through C5, above.
7. On June 6, 2011, Cochran's responded to the NOV by telephone.
8. On June 20, 2011, a written response to the NOV was received.
9. Based on the results of the May 20, 2011 PCE, and the documentation submitted on May 12, 2011 and June 20, 2011, the Board concludes that Cochran's has violated 9 VAC 5-80-1120(A), as described in paragraphs C(4), above.
10. Cochran's Permit issued April 11, 2011 includes PFL-1 and the violations described in paragraphs C(3) above, have been corrected.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Cochran's Lumber & Millwork, Inc., and Cochran's Lumber & Millwork, Inc. agrees to:

1. Pay a civil charge of \$5,078.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality

Post Office Box 1104  
Richmond, Virginia 23218

Cochran's Lumber & Millwork, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Cochran's for good cause shown by Cochran's, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Cochran's admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Cochran's consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Cochran's declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Cochran's to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Cochran's shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Cochran's shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Cochran's shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Cochran's.

11. This Order shall continue in effect until:

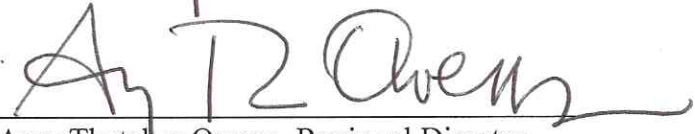
- a. The Director or his designee terminates the Order after Cochran's has completed all of the requirements of the Order;
- b. Cochran's petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Cochran's.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Cochran's from its obligation to comply with any statute, regulation, permit

condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Cochran's and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Cochran's certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Cochran's to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Cochran's.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Cochran's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26<sup>th</sup> day of July, 2011.

  
Amy Thatcher Owens, Regional Director  
Department of Environmental Quality

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Cochran's Lumber & Millwork, Inc. voluntarily agrees to the issuance of this Order.

Date: 7/22/11 By: Mark Cochran, VP  
(Person) (Title)  
Cochran's Lumber & Millwork, Inc.

Commonwealth of Virginia

City/County of Clarke

The foregoing document was signed and acknowledged before me this 22 day of July, 2011, by MARK Cochran who is Vice President of Cochran's Lumber & Millwork, Inc., on behalf of the corporation.

Rhonda M. Lamberson  
Notary Public

359368  
Registration No.

My commission expires: 9/30/2013

Notary seal:

